

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

MICHAEL AND SHELLIE GILMOR,  
et al.,

Plaintiffs,

vs.

PREFERRED CREDIT CORPORATION,  
et al.,

Defendants.

Case No. 4:10-cv-00189-ODS

**UNOPPOSED MOTION FOR ORDER APPROVING VOLUNTARY DISMISSAL  
OF CDC MORTGAGE CAPITAL, INC. WITHOUT PREJUDICE**

Plaintiffs originally named CDC Mortgage Capital, Inc. (“CDC”) as a defendant in their Sixth Amended Petition. Plaintiffs named CDC as a defendant based on discovery responses indicating that CDC had purchased and held at least one of the PCC-originated Missouri second mortgage loans at issue in the case. Plaintiffs had not previously named CDC as a defendant in any prior petition or complaint. To date, CDC has not been served with process or waived service process.

Plaintiffs recently consulted with counsel for Natixis Real Estate Holdings LLC as successor to CDC (“CDC”) about CDC’s apparent involvement with the loans at issue. The \$25,200 loan to which CDC was connected, and which formed the basis for Plaintiffs’ decision to originally sue CDC, does not appear to have been a Missouri second mortgage loan that CDC ever purchased, held or serviced. Counsel for CDC has represented that CDC to the best of its knowledge has no record showing that it purchased, held or serviced any Missouri second mortgage loans originated or made by Preferred, and CDC is not otherwise aware that it did so.

Based on the above, Plaintiffs submit that CDC may be dismissed from the case without prejudice. Such a dismissal without prejudice will be “fair, reasonable, and adequate” based on representations from CDC as stated above. Fed.R.Civ.P. 23(e)(2). Because to the best of Plaintiffs’ knowledge CDC did not buy, hold or service any of the loans at issue other than as stated above, the dismissal of CDC will not negatively affect or prejudice the Class or Defendants.

There is no need for the Court to require any additional notice of the voluntary dismissal. Notice of the Order via the ECF filing system will suffice. Although Fed.R.Civ.P.23(e)(1) states that “[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal,” Plaintiffs are unaware of any PCC-originated second mortgage loans that CDC purchased, received or serviced. Accordingly, no class members will be affected by the dismissal of CDC from the case. Therefore, Plaintiffs respectfully suggest that an Order of Voluntary Dismissal without Prejudice entered by the Court and served through the ECF filing system is sufficient to satisfy Rule 23(e)(1).

Finally, Rule 23(e)(3) states: “The parties seeking approval must file a statement identifying any agreement made in connection with the proposal.” Class Counsel and counsel for CDC have verbally agreed to the proposed dismissal of CDC from this lawsuit without prejudice, with each party to bear their own costs. This motion is not opposed by CDC.

For all of these reasons, Plaintiffs respectfully request the Court to enter an Order dismissing CDC Mortgage Capital, Inc. from this lawsuit without prejudice, with each side to bear its own costs.

Date: October 19, 2011

Respectfully submitted,

WALTERS BENDER STROHBEHN  
& VAUGHAN, P.C.

By: /s/ Kip D. Richards

R. Frederick Walters – Mo. Bar 25069

J. Michael Vaughan Mo. – Bar 24989

Kip D. Richards – Mo. Bar 39743

David M. Skeens – Mo. Bar 35728

Karen W. Renwick – Mo. Bar 41271

Garrett M. Hodes – Mo. Bar 50221

Matthew R. Crimmins – Mo. Bar 53138

Bruce V. Nguyen – Mo. Bar 52893

2500 City Center Square

1100 Main Street

P.O. Box 26188

Kansas City, MO 64196

(816) 421-6620

(816) 421-4747 (Facsimile)

**ATTORNEYS FOR PLAINTIFFS  
AND CLASS COUNSEL**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this the 19<sup>th</sup> day of October, 2011, I electronically filed the above and foregoing document with the Clerk of Court of the Western District of Missouri using the Court's ECF system, which will send notification of said filing to all counsel of record who are ECF participants.

/s/ Kip D. Richards